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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/522,544

01/27/2005

Gabriele Wedell

WEDELLI

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EXAMINER

EDWARDS, LYDIA E

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

09/04/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/522,544	Applicant(s) WEDELL ET AL.	
	Examiner LYDIA EDWARDS	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/27/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1- 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsui et al. (US 4871674).

Regarding Claims 1-6, Matsui et al. ('674) discloses a cell culture insert comprising a beaker-shaped insert wall having a membrane filter bottom and three projecting support arms that are distributed (arranged adjoining) around the circumference of the top and having triangular spacers tapered downward for a vertical and horizontal orientation in a well with a liquid culture medium in a cell culture plate, characterized in that the spacers are distributed around the circumference of the cell culture insert (Col 1, line 65-Col 2, line 2, Col 2, lines 45-49; Figures 1-9).

Matsui does not explicitly state wherein the spacers are designed with different lengths to the side in such a way that one large feed window (5) and multiple smaller windows (5A) are created. However the device is capable of creating one large window and multiple smaller windows as shown in figure 9. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Matsui to include spacers designed with different lengths to allow for multiple arrangements of smaller and larger windows.

Regarding Claims 7-9, Matsui et al. ('674) does not explicitly state wherein there is a wall cutout having a lower edge in an arc shape. It would have been an obvious matter of design choice to incorporate a wall cutout in an arc shape, since applicant has not disclosed that a wall cutout in an arc shape solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with a uniform edge as taught by Matsui.

Regarding Claims 10, Matsui et al. ('674) does not explicitly disclose wherein the insert wall has, at its end facing the membrane, a greater wall thickness than at the top. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a greater wall thickness at the bottom of the insert wall than at the top, since it has been held that where the general conditions of a claim are

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disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ

Regarding Claims 11, Matsui et al. ('674) does not explicitly disclose wherein the insert wall (11) is designed tapered on the outside from the top toward the bottom with a shaping incline of approximately 1.5 degrees and that the insert wall (11) has on its inside an incline of 3.3 degrees. However he does disclose a tapered insert wall. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have an insert wall tapered on the outside from the top toward the bottom with a shaping incline of approximately 1.5 degrees and that the insert wall (11) has on its inside an incline of 3.3 degrees, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ

Regarding Claims 12-13, Matsui et al. ('674) does not disclose that the membrane has a diameter (D) larger than an inner well radius of the surrounding well. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a well radius is 10 - 12 mm, the diameter of the membrane is 11 - 13 mm, the insert wall is 15 - 17 mm wide on the outside at the top and the spacers ensure an eccentricity of over 1.3 mm of the cell culture insert relative to the well, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ

Regarding Claims 14-15, Matsui et al. ('674) does not explicitly state wherein a specified material is tinted or transparent. However he does disclose that the cell culture material can be composed from polyvinyl chloride (Col 3. line 25-Col 4, line 3) which is well known in the art to be both transparent and tinted.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LYDIA EDWARDS whose telephone number is (571)270-3242. The examiner can normally be reached on Mon-Thur 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Griffin can be reached on 571.272.1447. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LYDIA EDWARDS/

Examiner

Art Unit 1797

LE

/Walter D. Griffin/
Supervisory Patent Examiner, Art Unit 1797